

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
PENIKA ANDERSON,

Petitioner,

-against-

CVS PHARMACY, INC., HELEN OF TROY
AND KAZ USA, INC..

Respondent.
-----X

**PETITION FOR
REMOVAL**

**Jury trial demanded
ECF case**

Docket No.:

Respondents, CVS ALBANY LLC i/s/h/a CVS PHARMACY, INC (hereinafter “CVS”) petitions for the removal of this action from the Supreme Court of the State of New York, County of Westchester, to the United States District Court, Southern District of New York, respectfully shows this Honorable Court:

FIRST: Penika Anderson (“Petitioner”) commenced an action against the above-named respondent in a Civil Action brought against it in the Supreme Court of the State of New York, County of Westchester entitled:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
PENIKA ANDERSON

Plaintiff,

-against-

CVS PHARMACY, INC., HELEN OF TROY
AND KAZ USA, INC

Defendant.
-----X

Index No. 55028/2022

A copy of the Summons and Complaint in this action is annexed hereto as ***Exhibit “A”*** and made a part hereof. Upon information and belief, the foregoing constitutes all process, pleadings, and orders allegedly served upon party in this action.

SECOND: This is an action of civil nature in which the District Courts of the United States have been given original jurisdiction in that there exists diversity of citizenship between the respondent and the petitioner and the amount in controversy exceeds the sum of \$75,000.00 exclusive of interests and costs. Accordingly, jurisdiction exists in the District Court of the United States as provided for by 28 U.S.C. §1332.

THIRD: Under the provision of 28 U.S.C. §1441, the right exists to remove this civil action from the Supreme Court of the State of New York, County of Westchester to the United States District Court for Southern District of New York, which embraces the place where this action is pending. In her complaint, Petitioner sought judgment as a result of personal injuries allegedly sustained on October 14, 2020, after using a Steam Inhaler she purchased from CVS Pharmacy located in Mt. Vernon, New York. Specifically, Plaintiff claims that boiling water spilled from the Steam Inhaler onto Plaintiff’s left breast causing second degree burns and permanent scarring.

FOURTH: The action involves a controversy between citizens of different states. Petitioner is and was, at the commencement of the action, a citizen of New York State, Westchester County. The Respondent, CVS Albany, LLC, is a Domestic Limited Liability Company with its sole member being CVS Pharmacy, Inc. CVS Pharmacy, Inc. is a Rhode Island Corporation with its principal place of business at One CVS Drive, Woonsocket, Rhode Island 02895. Upon information and belief, Kaz USA is a

Massachusetts company and resides in Marlborough, Massachusetts. Defendant Helen of Troy is a Nevada Corporation and resides in El Paso, Texas.

FIFTH: Upon information and belief, Petitioner's alleged amount in controversy will be claimed to exceed the \$75,000.00 threshold. Petitioner's Complaint did not specify the amount of damages because under NY State CPLR Section 3017(c), a plaintiff in a personal injury matter in the Supreme Court of the State of New York is not permitted to assert the damages amount in the Complaint.

SIXTH: In her Complaint, Petitioner alleges to have sustained a second degree burn injury that resulted in permanent scarring. While Petitioner's claims are expressly denied by CVS, if the Petitioner's allegations are proven, the claimed amount in controversy could exceed \$75,000. Accordingly, there exists original jurisdiction in the District Courts of the United States as provided in 28 U.S.C. Section 1332.

SEVENTH: The instant petition is being filed within thirty days of learning that the amount in controversy is claimed to exceed the Federal Court's jurisdictional limit in accordance with Fed. R. Civ. P. Section 1446(b). This action is also being removed within a year of commencement of the Action pursuant to Fed. R. Civ. P. Section 1446(b). No party to this action will be prejudiced by removing the Action.

EIGHTH: In accordance with the requirements of 28 U.S.C. § 1446, Stop & Shop attaches herewith and incorporates herein by reference copies of the following items served in this action:

- a. Petitioner's Summons and Complaint against Stop & Shop for damages filed in the Supreme Court of the State of New York, County of Westchester bearing Index Number 55028/22 (*Exhibit "A"*)

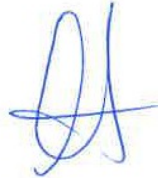
NINTH: By reason of the forgoing, the respondent desires and is entitled to have this action removed from the Supreme Court of the State of New York, County of Westchester to the United States District Court for the Southern District of New York, such being the district where this suit is pending.

TENTH: Concurrent with the filing of service and petition for removal, CVS is serving this petition for removal upon Petitioner's attorney, and filing a copy of this petition for removal with the Clerk of the Court for the Supreme Court of the State of New York County of the Westchester.

WHEREFORE, respondents, CVS ALBANY LLC i/s/h/a CVS PHARMACY, INC. pray that the above-entitled action now pending against it in the Supreme Court of the State of New York, County of Westchester be removed there from that Court.

Dated: New York, New York
January 27, 2022

By:



ERIN R. FROST, ESQ.
CULLEN AND DYKMAN
Attorneys for Respondents
CVS ALBANY LLC i/s/h/a CVS PHARMACY
INC
44 Wall Street
New York, New York 10005
(212) 701-4169
File No: 23000-185

To: Locks Law Firm PLLC
800 Third Avenue, 12th Floor
New York, New York 10022

Helen of Troy
1 Helen of Troy Plaza
El Paso, TX 79912

Kaz USA, Inc.
1 Helen of Troy Plaza
El Paso, TX 79912